



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

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ATTORNEY GENERAL

Honorable Walker Carson
County Attorney
Hudspeth County
Sierra Blanca, Texas

0-2086

Dear Sir:

Opinion No. 0-2086
Re: Necessity of lis pendens
notice in ad valorem tax
suits.

This is in reply to your letter in which you ask
the following question:

"Will failure to file a lis pendens notice
in a suit for delinquent taxes, brought in the
name of the State of Texas, make a judgment ren-
dered in such suit invalid as against a purchaser
who acquired the property by deed after the suit
was filed and before judgment was rendered in
such suit?"

We assume that the property in question is land, and that
this is a suit for ad valorem taxes.

The Constitution and the statutes of Texas give
the State a lien on all real property to secure the payment
of taxes on such property. Article 8, Section 15, of the
Constitution says:

"The annual assessment made upon landed
property shall be a special lien thereon; and
all property, both real and personal, belonging
to any delinquent taxpayer shall be liable to
seizure and sale for the payment of all the tax-
es and penalties due by such delinquent; and
such property may be sold for the payment of the
taxes and penalties due by such delinquent, un-
der such regulations as the Legislature may pro-
vide."

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Article 7172 of the Revised Civil Statutes of Texas says:

"All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title."

It is a well known rule of law in Texas that every purchaser of land is charged with notice of taxes due on said land and the tax liens thereon. In the case of Texas Bank and Trust Company vs. Bankers' Life Company, (Ct. Civ. App.) 43 S. W. (2d) 631, the court said:

"* * * Section 15, Article 8, of the Constitution provides that taxes on land shall be a special lien thereon. Article 7172 of the Revised Statutes provides that taxes upon real property shall be a lien until same are paid. Our courts hold that no one can be an innocent purchaser of land as against the lien held by the state or city for taxes due. City of San Antonio v. Terrill (Tex. Civ. App.) 202 S. W. 361 (error ref.); State Mortgage Corporation v. State (Tex. Com. App.) 17 S. W. (2d) 801; Kirk v. City of Gorman (Tex. Civ. App.) 283 S. W. 188."

Therefore, the person who purchased the land in question had notice that the State had a lien on said land to secure payment of the taxes.

It is a well known rule of law that "tax foreclosure sales are governed by the same rules governing judicial sales generally". Love vs. R. 3. Allday Supply Company, (Tex. Civ. App.) 106 S. W. (2d) 830. Such is the rule according to Article 7528, R. C. S., which is in regard to tax suits, and which reads in part as follows:

"The proper persons, including all record lien holders, shall be made parties defendant in such suit, and shall be served with process and other proceedings had therein as provided

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by law in ordinary foreclosure suits in the district courts of this state; and in case of foreclosure an order of sale shall issue and the land sold thereunder as in other cases of foreclosure; * * * All sales contemplated herein shall be made in the manner prescribed for the sale of real estate under execution." (Underlining ours).

Having come to the conclusion that the tax foreclosure proceedings in this case are governed by the same rules as in ordinary foreclosure suits, we believe that your question is answered by Article 2219, R. C. S., which reads as follows:

"When an order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, such order shall have all the force and effect of a writ of possession as between the parties to the foreclosure suit and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order. ***" (Underlining ours).

That statute specifically covers this case by virtue of the provision which says that the "order (of sale) shall have all the force and effect of a writ of possession as between the parties * * * and any person claiming under the defendant to such suit by any right acquired pending such suit." In the case you ask about, the purchaser acquired his rights in the land during the pendency of the suit.

The principal purpose of the filing of a lis pendens notice is to prevent a party, during the pendency of a law suit, from alienating the property in dispute so as to adversely affect the rights of other parties. Maes vs. Thomas, (Tex. Civ. App.) 140 S. W. 846. The rights of the State of Texas have not been adversely affected in this case because the State can foreclose its lien and have the property sold, if necessary, in the same manner as if no one had purchased it during the pendency of the suit.

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Our answer to your inquiry is that failure to file a lis pendens notice in a suit by the state for ad valorem taxes does not make a judgment rendered in such suit invalid as against a purchaser who acquired the property by deed after suit was filed and before judgment was rendered.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Cecil C. Rotsch*
Cecil C. Rotsch
Assistant

COR:jm

APPROVED MAY 2, 1940

Gerard B. Mann
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